

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1595 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos.1 , 2 and 5 Yes.
Nos. 3 and 4 No.

SATYA PAL GUSAIN

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for Petitioner
MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 20/01/97

ORAL JUDGEMENT

This petition is directed against the order dated 2.2.1996 passed by the Government of Gujarat, Revenue Department issued under the signature of Deputy Secretary to Government in the Revenue Department by order of the Governor whereby the punishment of stoppage of one increment for a period of six months without future effect has been imposed against the petitioner.

The petitioner is a Member of Gujarat Administrative Service (Class-I). During the period 15.7.1980 to 1.12.1903 the petitioner was working as Deputy Collector, Tenancy (Appeal), Baroda. With regard to the aforesaid period of his working he was served with the chargesheet dated 2.1.1989 i.e. after a period of nearly six years from the day he last worked as Deputy Collector, Tenancy (Appeal) and after a period of nearly eight years from the actual date of incident dated 24.12.1980. The charges levelled against the petitioner were that he had decided two Tenancy Appeals on 24.12.1980 and when the parties asked for the certified copies of the judgments he got copies of the judgments typed outside the office and still certified that the copies were prepared and typed by one Mr.B.K.Ganchi, Clerk-cum-Typist outside the office and after the working hours. It is alleged that by issuing such false certificate the petitioner had misused his official position and he was guilty of lack of maintaining devotion of duty under Rule 3(1) (ii) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. The other charge was that copying fee for 19977 words instead of 9024 words of the said judgment for two copies of each case were charged from the concerned parties to the dispute, amounting to Rs.960/- on the basis of false certification. It is further alleged that after reimbursing the said amount to Shri Ganchi the petitioner took away the amount and pocketed the same and the amount of copying fees for 9024 words per copy of the said judgment i.e Rs.72.20 and for six copies Rs.433.20 were chargeable and thus by calculating the excess number of words and not getting the copies typed by the said office clerk-cum-typist Shri Ganchi and by falsely certifying he took away illegally the amount of Rs.526.80 and therefore guilty of lack of absolute integrity and devotion to duty under Rule 3(1)(1) of Gujarat Civil Services (Discipline & Appeal) Rules, 1971. The inquiry commenced on 2.1.1989 and it culminated into punishment order dated 2.2.1996. The inquiry itself took the period of more than seven years and this penalty order was passed on 2.2.1996 imposing the punishment of reduction to lower stage in the time scale of Rs.3500-5000 for a period of six months without future effect. This order dated 2.2.1996 has been assailed by the petitioner through this Special Civil Application on number of grounds including the ground that after long duration from the date of incident the inquiry was started at belated stage after a period of nearly eight years, the inquiry itself has taken a period of more than seven years and now the petitioner has been punished for an incident of 1980 in February, 1996 i.e. after a period of nearly fifteen years, that

it is a case of no evidence; the order is based on conjectures and surmises and the authorities have acted with extraneous reasons; that the officer who held the inquiry was different than the officer who submitted the inquiry report; that the personal hearing was afforded by the concerned Deputy Secretary whereas the decision was taken by the concerned Minister; that the order suffers from malice and that the findings are perverse.

The respondents have filed affidavit-in-reply dated 9.10.1996 in response to the notice issued by this Court and the petitioner filed rejoinder dated 1.11.1996. After hearing both the sides Rule was issued by this Court on 2.11.1996.

I have considered the submissions made on behalf of both the sides. I need not deal with all the contentions which have been raised by the petitioner in detail because this Special Civil Application can be disposed of on few of the grounds which have been raised by the petitioner with regard to long and inordinate delay in the commencement of the inquiry and long period which has been taken in the inquiry itself as also the grievance raised by the petitioner that the inquiry report had been submitted by the officer who never held the inquiry and further that before taking decision to punish the petitioner the personal hearing was afforded by the concerned Deputy Secretary only and not by the Minister concerned and further that the departmental crucial witness itself had not supported the charges and yet the charges have been found to be proved and the petitioner has been punished. Before I deal with the aforesaid submissions it may be observed that if one looks at the charges the chargesheet itself would show that there was nothing so serious in the allegations on the basis of which the charges were framed against the petitioner, so as to hold a disciplinary inquiry for major punishment against the petitioner. The petitioner was class-I officer acting as a statutory authority as the Appellate Authority to hear the Tenancy Appeals and in doing so if he had written whole judgment in his own hand writing and the same had been got typed out of office for supply of the certified copy so as to be made available to concerned parties, in absence of any allegation of any oblique motive such allegations could not be taken to be a subject matter of chargesheet. The charge no.2 is more or less ancillary of charge no.1 and in fact the petitioner could not be concerned in computing of the words for the purpose of copying and for the charges in this regard and the allegation with regard to which charge no.2 is framed itself appears to be

unnatural ex-facie. However, I need not go into the merits of the charges and even if it is assumed that such charges could form the subject matter of inquiry against the petitioner it goes without saying that very initiation of inquiry and the framing of the charges on 2.1.1989 with regard to the incident of December, 1980 itself should vitiate the inquiry. In the facts of this case when the inquiry is started after a period of eight years, it is quite natural that in normal course the evidence may whither away and the defence which the delinquent official could make available in his favour may not become available to him after such a long lapse of time and that itself is sufficient to cause prejudice resulting into the denial of reasonable opportunity. Similarly the inquiry was held from January 1989 to February, 1996 and it is not alleged that the petitioner was responsible for prolonging the inquiry. It has been pointed out that even after the completion of the inquiry proceedings the matter remained pending for a period of nearly two years for passing of the final orders and apart from the prejudice it has prolonged the agony and suffering of the petitioner for such a long period and he has been visited with this punishment order after a period of nearly 15 years from the date of the incident. Even with regard to the charges the petitioner has offered the criticism that the star witness of the prosecution namely Shri B.K.Ganchi had also admitted that the certified copies were prepared by him for all the three parties and due receipt for the money had been given to them against the deposit and the amount was credited in the Cash Book and other registers for copying fee and subsequently credited into the Government Account by Challan. The petitioner has also stated in para 38 of his petition that Shri Ganchi had also specifically admitted in his deposition and cross-examination that in the present case it was his office duty and he had actually prepared the requisite number of copies of judgments in each case and as per the records he received payment of money for preparation and supply of the certified copies like other cases of similar nature. This witness Shri Ganchi had further supported the petitioner's case and contention that it was false allegation that the petitioner got aforesaid judgment typed outside and took away the amount of copying fee by issuing bogus certificate. The petitioner has submitted that the Inquiry Officer had observed at page 18 of the inquiry report that the said charges/allegations against the petitioner cannot stand and still the charges have been held to be proved on the basis of conjectures in irrational manner.

In para 33 of the Special Civil Application, the petitioner has stated that the whole evidence was recorded by the Departmental Inquiry Officer viz. Shri C.R.Desai but he did not submit inquiry report for a long time and the inquiry report and the findings were submitted after a period of two years by another officer namely Shri R.J.Savani before whom no evidence had been recorded nor the petitioner was given an opportunity of personal hearing before Shri Savani. This factual position averred by the petitioner in para 33 has not been controverted and in the affidavit-in-reply dated 9.10.1996 very cryptic reply has been given on behalf of the respondents and para 9 of this reply is a reply to all the averments made by the petitioner in paras 21 to 68 and what has been stated by the respondents in this reply is as under :

"9. With ref. to para 21 to 68, I say and submit that the contentions are misconceived in law and facts and deponent denies the same. The punishment has been awarded after arriving at finding, by affording all the opportunity of being heard to the petitioner and according all access to the records and proceedings and there is no question of any deviation and/or indifferent treatment to the petitioner. The decision has been taken in accordance with set procedure in the Government administration by the competent authorities and there is no question of any bias and/or malafide and/or arbitrariness as alleged. Since petitioner is awarded punishment, the petitioner has started abusing the authorities."

Thus, factually the premises on which the contentions have been raised by the petitioner have not been controverted and they remain uncontroverted. Thus, I find that Shri C.R.Desai who had actually conducted the inquiry did not give report and the report has been submitted by some other officer namely Shri Savani and that too without affording any opportunity to the petitioner on the evidence which had been collected by his predecessor. One fails to understand as to why Shri C.L.Desai had not been able to give report when he had recorded the whole evidence. In normal course Shri Savani before whom no evidence was recorded could hardly remain in a position to appreciate the evidence with that angle with which Shri Desai could have considered and it cannot be said that submission of the report by different officer than the officer who recorded the evidence has not prejudiced the petitioner's case and the grievance

raised by the petitioner in this regard cannot be said to be without force.

The petitioner's further contention that personal hearing before taking decision to punish the petitioner had been given by the concerned Deputy Secretary and no hearing was afforded to him by the Minister concerned has also not been denied as has been stated by the petitioner in Special Civil Application in para 49. He further contended that he being a very senior Deputy Collector (Class-I) of the Gujarat Administrative Service the decision in his case was to be taken by the Minister in charge of the Revenue Department who never heard the petitioner and when the petitioner had been called for personal hearing, the hearing should have been directly given by the decision making authority and not by any Secretary much less the Deputy Secretary. The factual submission in this regard also remains uncontroverted as reply to paras 21 to 68 as contained in para 9 of the affidavit-in-reply dated 9.10.1996 do not even refer these factual averments, what to talk of the denial thereof.

In any case, looking to the nature of the charges the criticism of the evidence offered by the petitioner with particular reference to the deposition made by Shri B.K.Ganchi, long and inordinate delay of nearly eight years in starting the inquiry and a period of nearly seven years taken in the inquiry itself, submission of the inquiry report by some other officer than one who actually held the inquiry and denial of the opportunity of personal hearing before the concerned Minister and the decision having been taken on the basis of the hearing afforded before the Deputy Secretary, I am of the opinion that the culminative effect of all these contentions adjudicated herein above must result in success of this Special Civil Application.

Accordingly, this Special Civil Application is allowed and the impugned order dated 2.2.1996 passed by the Government of Gujarat in Revenue Department, by order of the Governor under the signature of Shri D.J.Parmar, Deputy Secretary to the Government of Gujarat, Revenue Department is hereby quashed and set aside. Rule is made absolute. The petitioner shall be entitled to all consequential benefits. No order as to costs.
